IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2984 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHOLIA GRAM PANCHAYAT

Versus

APPEAL COMMITTEE OF SABARKANTHA DIST.PANCHAYAT

Appearance:

MR BB NAIK for the Petitioner.

M/S THAKKAR ASSOC. for Respondent No. 1

RULE SERVED for Respondents No. 2-8

Mr. L.B.Dabhi, ASSTT. GOVERNMENT PLEADER for Respondent No. 9

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/03/2002

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing and setting aside the order dated

7th July, 1997 passed by the Appellate Committee of Sabarkantha District Panchayat at Annexure "F" to the petition and the order dated 27th February, 1998 passed by the Deputy Secretary, Panchayats Rural Housing Development and Rural Development Department at Annexure "G" to the petition. In the present case, the petitioner is a Choila Gram Panchayat. The petitioner Panchayat allotted the land to the respondent nos.2 to 8 for putting up cabins for certain period, but the respondent nos. 2 to 8 have made pakka construction of the cabins. Hence, they have violated the terms and conditions of the lease. Therefore, a resolution was passed by the Gram Panchayat in its meeting dated January 2, 1997 for removing the unauthorised construction by the encroachments made by the respondent nos. 2 to 8 whereby the Deputy Sarpanch was authorised to to take legal action against respondent nos. 2 to 8 including approaching appropriate courts or authorities for removal of the unauthorised encroachments made by the respondent nos. 2 to 8. Pursuant to that resolution, notices were issued to the respondent nos. 2 to 8 on 30.1.1997. The respondent nos. 2 to 8 filed an appeal before the appellate committee in which the appellate committee of the respondent no.1 granted ad-interim stay against which the petitioner filed a writ petition in this Court. However, that petition was summarily dismissed. Thereafter, an LPA was also filed by the petitioner before the Division Bench of this Court. The Division Bench of this Court directed the appellate committee of the District Panchayat to hear the appeal within stipulated time and decide the same. The appellate committee, after giving an opportunity of hearing to the parties concerned, passed the order dated 7th July, 1997 allowing the appeal in part and quashing and setting aside the notice dated 30.1.1997 issued to the respondent nos. 2 to 8 by the petitioner Panchayat. The petitioner Panchayat was directed to remove the construction which is done in contravention of the lease agreement and also to remove other encroachments in accordance with law. Thereafter, the petitioner preferred a Revision Application before the State Government against the order of the appellate Committee. That Revision has also been dismissed by the Deputy Secretary, Panchayat Rural Housing and Rural Development Department vide his order dated 27th February, 1998. Hence, this petition has been filed by the petitioner Panchayat against the impugned orders.

2. Heard the learned counsel for the parties. The learned counsel for the petitioner submitted that the order of the appellate committee is

inconsistent in itself inasmuch as in the body of the order, it is mentioned that Panchayat is not required to take action against illegal encroachers till the lease period is over. While in the operative portion, it is mentioned that the Panchayat is directed to take legal action for removing the illegal construction made by the respondent nos. 2 to 8. The second contention of the learned cousnel for the petitioner is that the authorities have committed an error apparent on the face of the record as they have directed the Panchayat to perpetuate the illegality which has been committed by the encroachers and the authorities have not directed the petitioners to take legal action against the persons who have made construction in breach of the conditions of the lease agreement.

3. On the other hand, the learned counsel for the respondent nos. 2 to 8 contended that the authorities have taken care of the lease period for taking action against illegal encroachers as the Panchayat had leased out the land to the respondent nos. 2 to 8 without obtaining permission from the authorities concerned. As such, the Panchayat has commited an illegality from the initial stage without obtaining sanction of the authorities concerned and the Panchayat has allotted the land to the respondent nos. 2 to 8 on lease for a period of 7 years, 9 years and 11 years. As such, the authorites have considered the interest of the respondent nos. 2 to 8 lease holders for the period for which they were granted the lease to carry on their business by putting up their cabins on the land leased out to them. Therefore, according to him, the authorities have not committed any illegality and the orders passed by the authorities do not suffer from any illegality or infirmity. The respondent no. 1 has directed the petitioner Panchayat to find out the number of encroachments made illegally in the village and take action after following due procedure prescribed for removing the encroachments. Simultaneously, where the lease has already expired and they can also take action for the removal of the encroachments after the period of lease expires. The Panchayat has also been authorised by the respondent no.1 and had been confirmed by the State Authorities that the Panchayat, after obtaining permission of the competent authority can re-allot the plots for putting up the cabins to the concerned persons.

4. I have carefully considered the contentions of the learned counsel for the parties. In the present case, the appellate committee has considered the submissions made on behalf of the petitioner,

respondent nos. 2 to 8, and the report made by the Taluka Development Officer dated 28th April, 1997. The land was given to the respondent nos. 2 to 8 by various resolutions dated 27th August, 1993; 16th August, 1995; 6th December, 1995; 18th September, 1996 and 5th November, 1996 for three years, seven years and 11 years on lease and the rent was fixed at Rs.25/- per sq.mtr. per annum. The land admeasuring 16 ft x20 ft, 15 ft. x 12 ft. and 12 ft x 15 ft. was granted to the respondent nos. 2 to 8. It was contended by the petitioner before respondent no.1 that the respondent nos. 2 to 8 had made pakka construction though they were given on lease for putting up their cabins. As such, they have made unauthorised encroachments over the land and they are liable to be evicted and their construction is required to be removed. Therefore, they were given notices for removing their encroachments and so the Panchayat was fully justified in removing the illegal encroachments made by the respondent nos. 2 to 8 in breach of the lease terms. While, it was contended by the respondent nos. 2 to 8 before the respondent no. 1 authority that though the construction was made within the knowledge and with the consent of the panchayat. Therefore, the construction made by the respondent nos. 2 to 8 cannot be said to be without authority of the Panchayat or in breach of the lease agreement. The appellate committee has considered the fact that the petitioner as well as the respondent nos. 2 to 8 have done illegally from the very beginning. The petitioner was required to obtain permission of the competent authority before granting the land to put up the cabins on lease for three years, seven years and 11 years. Thus, the proceedings of the Panchayat were illegal as other five encroachments were also in existence in the village, out of which, three encroachments have not been removed and no proceedings have been initiated against them by the petitioner Panchayat. The Panchayat was also required to prepare a panchnama showing the exact position and they were also required to record the statements of the persons living in the same locality, but no statements have been recorded nor the panchanama as stated above has been prepared. After finding that it is not made clear as to how many illegal encroachments are in existence in the village and why notices have not been issued to such persons, the appellate committee has observed that the panchayat is required to prepare a panchnama showing the exact position of such encroachments and after recording statements of the concerned persons, legal proceedings are required to be initiated to remove all such encroachments. It appears that in the body of the order, the appellate committee has taken care of the interest of

lease holders and the Panchayat was directed to take action for the removal of their encroachments after the lease period is over. If the Panchayat thinks fit, then after obtaining permision from the competent authority, it can permit the respondent nos. 2 to 8 for putting up the cabins and that order has been confirmed by the State authority.

5. Thus, in my view, both the authorities have taken care of the legal as well as factual aspects in respect of the Panchayat and leaseholders and directed the Panchayat to take legal action for removal of encroachments and allotting the land for putting up the cabins in accordance with the procedure laid down therefor. As such, I do not find any illegality in the orders passed by both the authorities and this court does not think it proper to interfere with the impguned orders. The petition is therfore, dismissed. Rule is discharged with no order as to costs.

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